Dyncorp/Dynair Services, Inc. *and* Miscellaneous Warehousemen, Drivers and Helpers, Local 986, International Brotherhood of Teamsters, AFL–CIO. Case 31–CA–22083

November 29, 1996

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING AND FOX

Pursuant to a charge filed on June 19, 1996, the General Counsel of the National Labor Relations Board issued a complaint on September 17, 1996, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain and to furnish information following the Union's certification in Case 31–RC–7270. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint, and asserting affirmative defenses.

On November 1, 1996, the General Counsel filed a Motion for Summary Judgment. On November 5, 1996, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On November 19, 1996, the Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer and response the Respondent admits its refusal to bargain and to furnish information, but attacks the validity of the certification on the basis of its contentions in the representation proceeding that the unit is inappropriate and that the prounion conduct of its supervisory employees tainted the election.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding.[1] The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

We also find that there are no issues warranting a hearing with respect to the Union's request for information. The Union requested the Respondent to furnish the following information: a list of all employees with home addresses; seniority dates of all employees; rates of pay of all employees; list of all classifications, including minimum and maximum rate range; minimum and maximum wages per hour and the rate range of each employee and also, the method of progression; a copy of the insurance plan (including the amount the company pays and the amount the employee pays); the number of paid holidays in effect at the plant; pension plan or severance plan, if any; requirements and amount of vacation; incentive plan, if any; night shift premium; any other benefit or privilege that employees receive.

Although the Respondent in its answer denies that the foregoing information is necessary and relevant to the Union's duties as the exclusive bargaining representative, it does so solely on the basis of its contention that the Union's certification is invalid. In any event, it is well established that such information is presumptively relevant and must be furnished on request. See, e.g., *Maple View Manor, Inc.*, 320 NLRB 1149 (1996); *Trustees of the Masonic Hall*, 261 NLRB 436 (1982); and *Mobay Chemical Corp.*, 233 NLRB 109 (1977).

Accordingly, we grant the Motion for Summary Judgment.[2]

On the entire record, the Board makes the following

[1] We note in this regard that the Respondent failed to file exceptions to the hearing officer's July 14, 1995 report recommending that Respondent's postelection objection regarding the prounion activities of its supervisors be overruled. See Board's December 18, 1995 Decision and Direction, 320 NLRB 120 fn. 2 (1995) (adopting pro forma, in the absence of exceptions, the hearing officer's recommendation that the objection be overruled). In these circumstances, we find that the Respondent is precluded under Sec. 102.67(f) of the Board's Rules from raising the same issue in the instant proceeding. See *A. Bonfatti & Co.*, 316 NLRB 623 fn. 1 (1995), and authorities cited there. Although the Respondent raised a similar issue regarding both pre- and postpetition prounion supervisory conduct in a March 23, 1995 preelection motion to dismiss the petition, the Regional Director's and Board's consideration of that motion was clearly limited to the issue of whether the alleged prepetition prounion supervisory conduct tainted the petition. The Regional Director found that it did not because the Union submitted a new, untainted showing of interest, and the Board denied the Respondent's appeal. In these circumstances, we find that the Respondent cannot rely on its prior motion to dismiss the petition and appeal as justification for its failure to file exceptions to the hearing officer's report, which specifically reviewed the evidence submitted at the postelection hearing regarding such conduct occurring during the critical, preelection period and concluded that it did not warrant setting aside the election.

[2] Member Fox did not participate in the underlying representation proceeding. However, she agrees with her colleagues that the Respondent has raised no new issues in this "technical" 8(a)(5) proceeding warranting a hearing.

FINDINGS OF FACT

I. JURISDICTION

At all material times the Respondent, a Delaware corporation with headquarters in Reston, Virginia, is, inter alia, engaged in aircraft maintenance at Los Angeles International Airport, Los Angeles, California (the facility). The Respondent, in conducting its business operations, annually purchases and receives at the facility goods or services valued in excess of $50,000 directly from points outside the State of California, and derives gross revenues in excess of $500,000.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Certification*

Following the election held April 14, 1995, the Union was certified on February 29, 1996, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

> INCLUDED: Airframe and power plant ("A&P") mechanics employed by the Employer at Los Angeles International Airport ("LAX").
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> EXCLUDED: All other employees of the Employer employed at LAX including all A&P mechanic leads, ground service personnel, ground service mechanics, cleaners, rampers/ramp agents, dispatchers, passenger service employees, service agents, warehouse employees, office clerical employees, professionals, guards and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. *Refusal to Bargain*

Since about April 4, 1996, the Union has requested the Respondent to bargain and to furnish information, and, since about April 14, 1996, the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By refusing on and after April 14, 1996, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit and to furnish the Union requested information, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement. We also shall order the Respondent to furnish the Union the information requested.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Dyncorp/Dynair Services, Inc., Los Angeles, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Miscellaneous Warehousemen, Drivers and Helpers, Local 986, International Brotherhood of Teamsters, AFL–CIO, as the exclusive bargaining representative of the employees in the bargaining unit, and refusing to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

> INCLUDED: Airframe and power plant ("A&P") mechanics employed by the Employer at Los Angeles International Airport ("LAX").
>
> EXCLUDED: All other employees of the Employer employed at LAX including all A&P mechanic leads, ground service personnel, ground service mechanics, cleaners, rampers/ramp agents, dispatchers, passenger service employees, service agents, warehouse employees, office clerical employees, professionals, guards and supervisors as defined in the Act.

(b) Furnish the Union the information that it requested on April 4, 1996.

(c) Within 14 days after service by the Region, post at its facility in Los Angeles, California, copies of the attached notice marked "Appendix."[3] Copies of the notice, on forms provided by the Regional Director for Region 31 after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 19, 1996.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

[3] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Miscellaneous Warehousemen, Drivers and Helpers, Local 986, International Brotherhood of Teamsters, AFL–CIO, as the exclusive representative of the employees in the bargaining unit, and WE WILL NOT refuse to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

INCLUDED: Airframe and power plant ("A&P") mechanics employed by us at Los Angeles International Airport ("LAX").

EXCLUDED: All of our other employees employed at LAX including all A&P mechanic leads, ground service personnel, ground service mechanics, cleaners, rampers/ramp agents, dispatchers, passenger service employees, service agents, warehouse employees, office clerical employees, professionals, guards and supervisors as defined in the Act.

WE WILL furnish the Union with the information it requested on April 4, 1996.

DYNCORP/DYNAIR SERVICES, INC.